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THE KHOJA CASE 1866 - A Paraphrase

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Judgment delivered Nov. 12 1866 on the 'Khoja Case' (Aga Khan Case)

THE KHOJA CASE 1866

- A PARAPHRASE

The celebrated Khoja case which lasted for 25 days was litigated in the High Court of Bombay between the months of April and June, 1866, before Justice SIR JOSEPH ARNOULD.

WHO WERE THE PARTIES

The Plaintiffs were Daya Mahomad, Mahomad Saya, Peer Mohamed Cassumbhoy and Fazulbhoy Goolam Hoosanee with His Majesty's Advocate General as nominal complainant.

The Defendants were Mohamed Hoosein Hoosanee (otherwise called Aga Khan) (in this paper I shall refer to him as "the Imam"), Allarakia Soomar, Khakee Pudminsey, Dossa Lakuck, Mahomed Peerbhoy, Allybhoy Jan, Hubbibhoy Ebrahim, Mooraj Premjee, Dhurmsey Poonjabhoy, Noor Mahomed Rajpall, Assoo Gangjee, Nanjee Alloo and Mahamed Yoosoo Moorgay, KAZI of the Mahomedans of the town and Island of Bombay.

The counsels for the Relator were Mr. Anstey, Mr. Scoble and Mr. MacPherson (instructed by Mr. Khunderow Morojee). The counsels for the Imam were Mr. Bayley, and Mr. Howard (instructed by Messrs. Keir, Ramsden and Prescott). The other defendants had their own counsels.

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The Information and Bill in this suit had been filed by the Relators and Plaintiffs representing a numerical minority of the Khoja Community of Bombay against the Defendants the principal of whom represented a numerical majority of the same community. It prayed interation (among other things):

- (1) That an account be taken of all property held in trust for the Khoja community of Bombay which may have come into the hands of the Mukhi and Kamadhia (treasurer and accountant and see later under what is a Mukhi and what a Kamadhia).
- (2) That it may be declared that the Mukhi and Kamadhia had ceased to be such since the 8th November, 1861, and be ordered to deliver all property in their possession to such person as the Court directed.
- (3) That a scheme may be settled to effect the above declaration. That there be a periodical election from time to time of the Mukhis and Kamadhias and generally for the security and management of the property of the said community.
- (4) That the first defendant, The Imam may be restrained from interfering in the management of the trust property and affairs of the Khoja community, or in the election and appointment of Mukhi and Kamadhias, from excommunicating any Khojas, or depriving them of the various privileges pertaining to membership; from celebrating marriages in the Jamatkhana; from demanding or receiving from any Khoja any oblation, cess, offerings etc. in the alleged spiritual or temporal capacity of him, the first defendant, the Imam.

While these aforementioned were very important issues there were of peripheral importance vis a vis the 5th clause of the prayer which read:

"That it may be declared that the said trust premises (i.e. the public property of the Khoja community of Bombay) are holden and ought to be applied to and for the original charitable religious and public uses and trusts to or for which the same were dedicated and intended so to be, and, to none other; and to and for the sole benefit of the Khoja sect and none other; and that no person not being a member or having ceased to be a member of the same (and in particular no person professing Shia opinions in matters of religion and religious discipline) is entitled unto, or ought to have, any share or interest therein, or any voice or management thereof".

To come to basic issue definition, this clause raised the question with which the evidence in this case was concerned as to:-

what is their origin were the religious tenets of the KHOJA community and what from the beginning, has been the nature of their relations - spiritual or temporal with the ancestors of the first defendant Aga Khan, who on his part alleges that he is and his ancestors in the long line of hereditary descent have successively been the Imams or spiritual chiefs of the Shia Imami Ismailis.

The plaintiffs (hereafter this term will include the Relator) contend that Pir Sadardin (who both sides admit converted the Khojas from Hinduism to some form of Mohamedanism) was a Suni, that the Khoja community has ever since its first conversion been and now is, SUNI, and that no persons calling themselves Khojas who are not Sunis are entitled to be considered members of the Khoja community, or to have any share or interest in the public property of the Khoja community or any voice in the management thereof.

The defendant the Imam and the other defendants who were in the same interest, maintained that Pir Sadardin was a Shia of the Imami Ismaili persuasion, a Dai (missionary) of one of the direct lineal descendants of the Imam. That from the time of the first conversion till now the Khoja community has been and still is of the Shia Imami Ismaili persuasion and is and always has been bound in close ties of spiritual allegiance to the ancestors of the Aga Khan the Imam, whom the Khoja community have always regarded and still regard as their Moorsheds or spiritual heads.

Mr. Anstey the counsel for the Plaintiffs expressly admitted that the determination of this issue would in effect dispose of the whole suit:

"If the Khojas" he said, "are proved in their origin to have been Sunis, the relators and plaintiffs must succeed if they are proved to have been originally Shias or Shia Imami Ismailis, or in any way non-Sunis, then the defendants must

succeed."

EXPLANATION

The Plaintiffs said Pin Sadardin was a Suni, that the Khojas were and are Sunis. Whereas the Imam maintains that Pir Sadardin was Shia, that Khojas were and are of the Shia Imami persuasion. The lawyer for the Plaintiffs agreed that the determination of this issue would settle the matter one way or the other.

FLASHBACK

In 1851, Sir Erskine Perry, in a suit commenced by information and bill (on 21st. February, 1850) between parties some of whom (especially the first defendant the Imam) were the same parties, and-all of whom respectively represented the same interest as those now represented by the plaintiffs and the defendants, pronounced. a "Declaration of Rights". The information and Bill in the present case purported to be a continuation of that information and bill but Justice Arnould felt that expression of judicial opinion was not binding as it was never drawn up as a decree. Sir Erskine Perry termed it a "Declaration of Rights" and expressed a hope that 'the Khojas by its aid will, "be able to elect a Mukhi and Kamadhia and manage their caste affairs among themselves, without rendering any further application to the Court necessary".

Sir Erskine Perry was an adept at the history and customs of the native populations of India and Justice Arnould paid testimony to his faculty in the judgment. But Justice Arnould felt not bound by Sir Erskine Perry's decision as he was not certain that "his decision was arrived at upon the same, or substantially the same evidence, as that which has so exhaustively been adduced before me during the protracted hearing of the present suit, which occupied the Court for no less than twenty five days." Furthermore, at the time the information and bill was placed before Sir Erskine, the issue in the present case (whether Pir Sadardin was Shia or Suni) was never an issue there, and he did not pronounce on it. Furthermore Sir Erskine was not called upon to decide what the full conditions for membership in the Khoja community were.

EXPLANATION

In 1850 the same Plaintiffs went to Court against the Imam, Sir Erskine Perry gave a decision on certain matters. Justice Arnould had to canvass the possibility of whether he was bound by that judgment. He felt he was not, as many matters litigated before him were not brought up then and secondly Erskine Perry's declaration was not drawn up as a decree.

One thing this flashback does show is that the 1866 case was a culmination of a long drawn out antagonism (this will become more apparent later when the relationship of the Bombay Jamat with the Imam is discussed).

It must also be noted that in the 1850 case the principal question whether Khojas were Shias or Sunis was not even discussed.

JUSTICE ARNOULD CONSIDERED VARIOUS QUESTIONS IN ORDER TO GET DUE APPRECIATION OF THE EVIDENCE.

First - What are the Sunis as distinct from the Shias?

Second - Who and what are the Shia Imami Ismailis?

Third - Who and what is the first defendant (The Imam) Aga Khan?

Fourth - Who and what are the Khojas and what are and have been their relations with the first defendant and his ancestors?

Fifth - What have been the relations of the first defendant the Imam with the particular community to which the relation and Plaintiffs belong i.e..The Khoja community of Bombay?

The First Question - SUNIS and SHIAS

The Sunis are orthodox Mussalmans the people of the Sunna or tradition. Their KULM or profession of faith is the simple one "There is no God but God and Mahomed is the Apostle of God". To this the Shias add "and Ali the companion of Mahomed & the vicar of God". The elevation of Ali to an almost co-equal position with the Apostle of God himself, may be stated popularly as the great distinctive tenet of the Shias.

Justice Arnould then canvassed the history of the earliest divisions in Islam:-

"The Apostle of God died without appointing a 'Caliph' or 'Successor'. The Caliph or Successor of the Apostle of God (who had been both temporal and spiritual sovereign) was to succeed him in both these capacities. He was to be both 'Emir-al-Momenin' or 'commander of the true believers' and also 'Imam-al Moslemin' or 'spiritual chief of the devout' as we should say in our Latin or Western phrase, 'Supreme Pontiff as well as Emperor or temporal ruler'".

Justice Arnould then canvassed the history whereby the general expectation of Islam that Ali, the first disciple and the beloved companion of the Apostle of God would be the first Caliph, was frustrated by Ayesha, the young and favourite wife of Mahomed, a rancorous enemy of Fatima and Ali who procured the election of her own father Abubaker, who on his death was succeeded by Osman and finally by Ali. Even on being Caliph, aided by Ayesha, Moawiyah of the family of the OMMEIADES contested the caliphate and while the strife was on, Ali was slain by a Kharegite in the mosque of Cufa, not too distant from the ruins of Babylon.

Justice Arnould then speaks of Ali as:

"....a man brave and wise, and magnanimous and just, and self denying in a degree hardly exceeded by any character in history....."

Paging through Islamic history, the Court described the poisoning of Hazrat Hassan through the treachery of Yezd the second OMMEIADE Caliph of Damascus: "There thus remained as head of the direct lineage of the Apostle of God, Hoosein the younger son of Fatima and Ali, a brave and noble man, in whom dwelt much of the spirit of his father".

The Court then described the martyrdom of Imam Hoosein at Kerbela: "The noble son of Ali and Fatima the favourite grandson of the Apostle of God, after deeds of valour romantic even in an Arab of that age, fell pierced through and through with the arrows and javelins of the cowardly assailants who did not dare to come within the sweep of his arm ..." This tragic event stirred the heart of Islam to its very depths and even now 1300 years later it separates the Islamic world into two great and hostile divisions, the Sunis and the Shias. The Sunis who bless the memory and are zealous in the cause of Ayesha and Abubaker and Omar and Osman and of the Shias who execrate the memory of the three first Caliphs and hardly in a less degree, that of Ayesha herself, who by degrees have come to regard Ali as a something more than mortal - as not only the vicar but in some mystic sense, an incarnation of God. Who venerate Fatima -as the first among women; and yearly celebrate the martyrdom of Hoosein not only with the outward signs but the inward reality of lamentation and mourning and woe.

The Court then described MOHURRUM and that it was since the accession of the SAFFEVI dynasty (Shia) in Persia a national ceremony of mourning (here the Court referred to the books of CHARDIN, POTTER and MORIER on their travels to Persia). In India where there was a large Suni population, the Mohurrum was celebrated with "riot and ill-managed merriment, with ribald jests, and the course antics of mountebanks dressed up in skins of wild beasts. The Shias on the other hand, assembled sadly in their houses, or their mambaras, where they listen with tears and loud sobbing to the pathetic story. They lead along mourning and beating their breasts as they go, a riderless white horse, representing that from which Hoosein, parched with thirst, dismounted to take his last cup of water at his tent door, when the remorseless Shamer shot through his lips with an arrow as he drank and mingled his dying blood with to the draught."

Kerbela is to Shias what Jerusalem was to the early Christians. Near Nijuf is Meshed Ali, the muasoleum of Ali and at Kerbela is Meshed Hoosein. These tombs though then in the territory of the Suni Turks (1866) had been adorned from time to time by the kings of Persia and were constantly attended to by SYUDS (descendant of Ali). There is a constant stream of Shia pilgrims to these tombs and many devout Shias are buried in the environs of these tombs (see Gibbon's

Decline and Fall chap. 50). Furthermore, the sacred dust of Kerbela is made into moulds (also known as MOHURS). Whenever the Shia prays, which he does three times a day, he is careful to put his mohur of the dust of Kerbela on the ground so that it may meet his forehead in the act of prostration, - and when in prayer he names the name of God, he touches one of the beads fashioned out of the dust of Kerbela that are stringed on his rosary.

In short, the whole religious life of the Shia is complete steeped in a current of thoughts, beliefs, traditions and observance which all have their source in Ali and Fatima and their two sons Hassan and Hoosein - the four venerated names which with that of the Apostle of God compose the panchtan (or Pentad) of the Ala Saba, or Holy Family of Islam.

Now all this the Sunis regard as so much deplorable superstition. To them to revere Ali as the Vicar of God, still more as an incarnation of God, is utterly abhorrent to all the religious feeling of a pious and orthodox Suni. To go on pilgrimage to Kerbela to bow the forehead in prayer on moulds made of the dust of Kerbela, etc., are all practices which a Suni Mussulman shrinks from as so many forbidden superstitions.

The Second Question - WHO AND WHAT ARE THE SHIA IMAMI ISMAILI?

Formally, they are those among the Shias who hold Ismail, the seventh indescent from Ali to have been the last of the revealed Imams; and who also hold that, until the final manifestation of Ali who (as an incarnation of God) is to come before the end of all things to judge the world, the musnud of the Imamate is rightfully held by an hereditary succession of unrevealed Imams, the lineal descendants of Ali through Ismail. Under the dominion of the Abassides (from AD. 750 to 127) the Ismailis were exposed to severe persecution. Their doctrine of the Imamate made them peculiarly obnoxious. Since every Caliph or successor of the Apostle of God held as part of his sovereignty the office of Imam-al-Moslemin the doctrine of the Ismailis in the eyes of the Suni princes was not only heresy in religion but treason against the state. Consequently, Ismailis practised their tenets secretly.

In all essentials the Ismailis were Shias but in addition they held certain peculiar tenets such as this respecting the Imamate, which would have been first formalized into a regular system about the beginning of the tenth century by the famous Abdallali-Bin-Maimun who taught first in Persia and afterwards at Salimiyah in Syria. One of the initiated disciples of Maimun himself a lineal descendant from Ismail Abdalla or Obeidollah, about the middle of the tenth century, laid in Africa the foundations of what afterward became the Fatimite Caliphate of Cairo, and which lasted till overthrown by the orthodox Suni Saladin about the year of Christ 1171. The Fatimite Caliphate was a dynasty of Ismailis. In Cairo under the dominion of the Fatimite Caliphs the religious system of the Ismailis with its secret lodges, its many stages of initiation and its somewhat mystic ceremonies, was matured and perfected.

Two points emerged from all this which had a tremendous bearing on the main issue of this case (notice these with some degree of attention as it shows how it affected the outcome).

- (1) The first point is the universal prevalence among Ismailis of the practice of 'Takiah' or concealment of religious opinion.
- (2) The method of seeking to make converts by assuming to a great extent the religious stand points of the person whom they desired to convert, modestly hinting a few doubts and difficulties and then by degrees, suggesting as the only possible solution of these the peculiar tenets of their own system.

TAKIAH

Takiah is an Arab word whose root meaning is 'fear or caution', its full applied meaning is 'concealment of a man's own religious opinion and adoption of alien religious forms' - either from a desire to avoid giving offence or from dread of persecution.

EXPLANATION

The peculiar tenets (principles) of the Ismailis with regard to the Imamate, imposed upon them a peculiar reason for practising 'TAKIAH' in all countries within the sway of the Suni Caliphs. This long enforced habit grew at last into a

second nature and the practice of Takiah became universal among the Ismailis, the offspring of persecution and fear.

The other peculiarity of the Ismailis viz., of assuming or admitting the truth of the greater portion of the religious principles of those whom they wished to convert to their own is illustrated by Silvestre de Sacy (Religion des Druzes, vol. i. Introduction p. 148. This is also confirmed by the KITUB-AL-SIYASET an Ismaili work of authority.

In short, Ismaili Dais were instructed how to convert e.g., "If it be a Christian he hopes to 'bring over' he must expatiate on the obstinacy of the Jews and ignorance of the Mussalmans, must profess the reverence for all the chief articles of the Christian creed, but gently hint that they are symbolic and point to a deeper meaning to which the Ismaili system alone can supply the key. He may suggest that the Christians have somewhat misinterpreted the doctrine of the paraclete. That a Paraclete, then is, and that it is to this the true Paraclete - that the Dai or Missionary would lead his enquiring friend".

Two points emerge:

- (1) Ismailis habitually enjoined and practised Takiah.
- (2) Their Dais or missionaries were directed to convert by assuming, to a greater extent the religious standpoint of those whom they wished to bring over to their own faith. (once again I wish to remind the reader to keep these points in mind as having an important bearing on the case).

HASAN-BIN-SABA

Justice Arnould spoke of a curious passage in history which connected the Imam with the 'old man of the Mountains' with the chiefs or the hereditary Grand Masters of the Assassins in Alamut.

After the Ismailis system had been elaborately perfected in Cairo, it attracted the attention of a very accomplished young Persian of Arabian descent and of Shia faith who had already given promise of a brilliant career. Hasan-bin-Saba the son of a learned Shia doctor of the City of Rhai in Persia, went to Egypt to be instructed at the fountain head in the more esoteric doctrines of the Ismailis. After becoming an adept at Ismailism he returned to Persia to propagate the faith. Persia then being strictly Suni, Hassan bin Saba realized how dangerous was the endeavour. Hassan then possesses himself of the impregnable mountain stronghold of Alamut built on a commanding crag of the Elburz mountains and established himself there in the year 1090 AD.

For 35 years he employed all the remarkable power of his mind in organizing a system of terror which fought with the dagger against the sword and revenged persecution by assassination. The connecting factor between Alamut and the Imam was in the person of Hassan-ala-Sikrihi-es-Salam (shortened Zakaresalam) who was 4th in succession from Hassan bin Saba as 'the hereditary Grand Masters of the order of the Assassins of Alamut'. Hassan bin Saba was not an Ismaili by birth, he was not a lineal or collateral descendant from Imam Ismail. Imam Zakaresalam on the other hand was a direct lineal descendant of Ismail, (through Nizar a son of Moostansir) who had been brought to Alamut in the time of Hassan bin Saba.

Von Hammer whose books on history were used in this case drew exclusively from Suni sources and hence there was a doubt which Justice Arnould states:

"This is not the place, of course, for any attempt to clear up the obscurity of an Asiatic pedigree".

The Court then canvassed the history of the fall of Alamut in 1258. The Court then spoke of the pedigree of the Imam and said:

"One indeed Shah, Islam Shah the 14th in the ascending line from Aga Khan, is currently mentioned by a tradition very prevalent in the Khoja caste, as the Imam of whom Pir Sadardin, the converter of the Khojas, was the missionary or Dai. It appears probable that from the time the rulers of Persia became Shia, as they did from the establishment of the Sageri dynasty about the commencement of the 16th century of our era, all active persecution of Isnahis ecased?"

The Court then spoke of Imam Abool Hassan Ali, the grandfather of the Imam who was governor of the City of Kerman. The Court then referring to Macdonnell Kinneir's book. 'Topographical History of Persia' discussed the settlement of remnants of Ismailis near the ruins of Alamut who go by the name of Hooseinis and recognize as their chief an Imam "dwelling near Kekht" whose descent they deduce from Ismail. The Court spoke of the Hooseinis as of the race who regard as their Imam the first defendant and that the Imam of the Ismailis referred to while Kinnir was in Persia was Shah Khalilulah the father of the first defendant the Imam. Votaries went from India to receive his benedictions. These pilgrimages were known as pilgrimages to Durkhana.

Third Question - WHO IS THE AGA KHAN?

"Mahomed Hussain Hooseinee, otherwise Aga Khan, or as he is more formally styled when addressed or mentioned in official documents by the Bombay Government - "His Highness Aga Khan Mehelati is the hereditary chief and unrevealed Imam of the Ismailis claiming descent in direct line from Ali, the vicar of God, through the 7th (and according to the Ismaili creed) the last, of the revealed Imams - Imam Ismail, the son of Jaffir Sadick.

The Court then canvassed the Imam's own personal history and the history of Imam Abool Hassanali, and the slaying of Imam Khalilulah Shah in Persia in 1817. "The news of this event" says Mr. Wodson in his recent History of Persia (London 1866 vol. i -.8 vo.p 192) "was received with the greatest concern by the Shah who dreaded lest he should be held responsible by the dangerous sect of the Ismailis for the death of their sacred chief. The Shah Futteh-Ali-Shah accordingly caused severe punishment to be inflicted on all the chief assailaints in this murderous fray, and he conferred on the young Aga Khan (The Imam) large possessions in addition to those which had descended on him through his ancestors, the government of the entire district of Koom and Mehelat, and the hand of one of his daughters in marriage.

In 1838, the Imam raised the standard of revolt and seized the government of Kerman, where his grandfather had once presided, and where he himself had numerous adherents. The reason being that, Hadji Mirza Aghasi, who had been the tutor of Mohamed Ali Shah, the Shah of Persia, and who was during the reign of his pupil, the Prme Minister of Persia, had become the chief favourite and minion of the all powerful minister. Aghasi was a person of low origin formerly in the service of the Imam. Through his patron he demanded in marriage for his son, one of the daughters of the Imam, a grand daughter of the late Shah-in-Shah. This the Imam felt as a great insult - despite strong pressure by the Prime Minister the Imam refused to comply to this request. Having alienated the most powerful man in Persia the Imam decided to gain safety by asserting himself in arms making Kerman his headquarters. In 1840, empowerd by numbers, the Imam took flight through Baloochistan to Sind where he was received hospitably by the Talpoor Ameers. The Imam had many adherents in Sind who kept him amply supplied. This enabled him to raise and maintain a body of light horse, who during the latter stages of the Afghan war (in 1841 and 1842) were of some service both to General Nott in Candahar and also to General England in his advance from Sind to join Nott. For these services and others rendered to Sir Charles Napier in 1833-34, the Imam received a pension from the British Government which he still enjoyed in 1866.

In 1845 the Imam came to Bombay where he was received by the cordial homage of the whole Khoja population. In 1846-47 and 1848, the Imam was in Calcutta as a result of the demonstrances of Mohamed Ali-Shah whose government was uneasy at the presence of the Imam in a port of such ready access to Persia as Bombay. Ever since that time the Imam made Bombay his principal place of residence - his "DURKHANA"

The Court then discussed the Imam's ceremonial habits of attending to preside at the Jamatkhana on the more sacred anniversaries of the Mohamedan calendar. "Every week on Saturday (when in Bombay) he holds a durbar (levee) in the Jamat Khana at about 7 or 8 o'clock in the evening when all the members of the Khoj'a community who please may attend and have the honour of kissing his hand".

Fourth Question - WHO AND WHAT ARE THE KHOJAS AND WHAT HAVE BEEN THEIR RELATIONS WITH THE HEREDITARY ANCESTORS OF THE AGA KHAN?

The Khojas were originally Hindus of the trading class inhabiting the villages and towns of Upper Sinda They were converted by Pir Sadardin about 500 years ago. Both parties agreed that the tomb of Pir Sadardin was in Ootch in Bhawalpore. According to the great body of the Khoja community Pir Sadardin came from Khorasan and was an

Ismaili Dai sent by Shah Islam Shah and the Mohamedanism he taught his converts was the Shah Imami Ismaili faith. The Plaintiffs maintained that Pir Sadardin was from Mooltan and converted the Khojas to Suni Mohamedanism. From Sind the Khoja conversion spread into Cutch, then Kathiawar and through Gujerat to Bombay.

The Court can vassed Khoja settlements on the seaboard of the Indian Ocean and their preoccupation with commerce and the retail trade and particularly their unstinted adherence to the Imam (except for Bombay).

The organization of the community was canvassed.

"Wherever a Khoj'a community is to be found, however small, its organization is the same; it has a Jamat, a Jamatkhana, a Mukhi and a Kamadhia." The "Jamat" is the 'congregation of the people', the assembly in council of all the adult male members of the Khoja community of the place. The "Jamatkhana" is the council hall of the community. The "Mukhi" is the treasurer or steward, and the "Kamadhia' the accountant.

The Mukhi and Kamadhia are not, according to the usage of the Khoja community, elected for any ascertained and fixed period but appear to hold their office (if they wish so to do) as long as they give satisfaction. Numerous instances were deposed showing Mukhis holding office for several consecutive years. Besides, these local Mukhis and Kamadhias proof was given that in Sind and Kathiawar, provincial. Kamadhias were appointed by and hold office under the Imam for the time being of the Ismailis. The duty of these functionaries is to collect and forward for transmission to the Imam wherever he may chance to reside, the contributions raised on his account by the Khoja community.

The court then heard direct evidence of account books going back to as early as 1772 and evidence of tradition that, for a time 'beyond which the memory of man runneth not to the contrary' from the origin - from the very outset of their existence as a distinctive community the Khojas have been in the habit of transmitting, as to their 'Sirkar Sahib' (Lord and Master) voluntary offerings (Zakat) out of religious feeling (DHURM) to the Imam for the time being of the Ismailis whom they revered as their-Moorshed or spiritual head.

The evidence on this point was incontrovertible. Not only were the Khojas in the habit of transmitting contributions to the Imams of the Ismailis but it was also from the origin, a frequent practice with them to make pilgrimages into Persia for the sake of beholding and doing homage to their spiritual chiefs. This practice was called pilgrimage to "Durkhana" - i.e. the principal residence for the time being of the Imam. As one witness said:

"From all time our fathers used to go on pilgrimage to Durkhana".

The Court then heard a narrative of one of these pilgrimage from Bombay to Bunder Abhas on the Persian Gulf.

"The Aga" said the witness, "sat on his musnud; we beheld his face, kissed his hand and retired".

Talking about the financial sacrifice entailed to make the trips, Justice Arnould says that to the English mind this seemed a considerable amount to spend, "But the West can never understand the East, especially the modern and mercantile West".

The question then went to Dasond, a percentage of income transmitted to the Imam as the Moorshed or Spiritual head of the Khojas.

"It is out of the Fund this raised after consultation with, the agent (warras) of the Imam, that the necessary local public expenses of the various communities are defrayed".

One witness said he paid the dues "as a matter of Dharm or religious feeling". "I pay them" he said, "for the Aga; if I knew they went to anyone else except our Moorshed (Spiritual-Head), I would not pay anything at all".

A. Soomar, the Mukhi of the Jamat of Bornbay said:

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"If the Mukhi and Kamadhia did not hand over the monies to the Aga, the Khoja community would pay no more fees".

The Kamadhia of Kathiawar said among other things:

"All the Khojas in Kathiawar know that their contributions go primarily to the Aga, otherwise they would not pay a pie".

This evidence led the Court to two conclusions:

- (1) That except for the comparatively small numbers of Bombay Khojas who make up the Plaintiffs and Relators, the Khoja community would make no contributions at all for public or caste purposes except and in the name and primarily on account of their Sarkar Sahib the Imam of the Ismailis.
- (2) That the great bulk of the so called public property of the Khoja community, both in Bombay and elsewhere, has been acquired by monies paid out of the Sarkar Sahib's fund with the approval and consent of the properly constituted local agents of the Aga Khan and his predecessors.

Khojas as a rule have no masjids or mosques; in fact the only masjid uptill then in existence was that erected in A.D. 1822 in the Khoja burial ground of Bombay. The nimaaz or daily prayers among Khojas are repeated in their jamatkhana. It was also mentioned that the pedigree from Ali through Ismail to the Imam for the time being, is chanted 3 times a day as part of the service of the daily prayer called DUA throughout all the Jamatkhanas of the Khojas including that of Bombay.

EXPLANATION:

In this part the connection between the Khojas and the Imam was canvassed and of particular significance is the fact that Khojas have no masjids except the one of 1822 in the burial ground. This is significant and its reason for existence is explained later. Readers are once again requested to keep this fact in mind as a fact that had bearing on the outcome of the case.

The Fifth Question

What have been the relations of the Imam himself with the particular jamat of Bombay?

In this question the case really unfolds. It is here we see why the Khojas and the Imam went to Court and how antagonism had arisen through controversy and strife.

In 1829 one Hubbib Ibrahim, the father of Ahmed Hubibhoy (the most active and influential of the present plaintiffs) resisted the customary payment of Dasond. The Imam, to overcome this opposition, sent his emissary Mirza Abool Cassim, accompanied by his maternal grandmother, Marie Bibi who harangued the Jamat in support of the claims of their Moorshed, This controversy led to the bill of 1829 spoken of earlier. However, in 1830 Ibrahim and his partisans numbering 12 and called "BARBHAIE" were outcasted. In 1835 they, on their own petition, asked to be readmitted and on the direction of the Imam were readmitted on conditions laid down.

From then onwards until 1864 there was no record of disturbances. But during the Imam's absence in Calcutta in 1846-1848, a litigation took place in Bombay which further divided the Khoja community in Bombay, It was a well known Case as to the rights of female inheritance called SARJUN-MEER-ALI'S case. Sir-Erskine-Perry gave a learned judgment based on case and usage against the rights of Khoja females to inherit according to the rules of Mohamedan law. In this litigation the Imam was represented by his brother Mohamed Bauker Khan who endeavoured to uphold the rule of inheritance as laid down in the Koran. Hubbib Ibrahim and the Barbhaie took an active part on the other side. This led to fresh feuds and in 1848 another excommunication. The Barbhaiesformed their own jamatkhana.

In 1850 an unfortunate incident took place at MAHIM jamatkhana where as a result of the feuds four Khojas of the Barbhaie party were murdered. As a result 19 Khojas were tried in the Supreme Court in 1850 and 4 were capitally sentenced and hanged.

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In 1850 an information and bill was filed and in 1851 Sir Erskine Perry pronounced his Declaration of Rights which

had the effect of producing a state of peace for ten years. The outcasted were readmitted. The new Jamatkhana was abandoned and all went smoothly until 20th October. 1861, when the Imam thought fit to publish a paper.

In that paper the Imam expressed his desire to bring the Khojas to conform to the practices "of the Imamujah creed of his holy ancestors!" (in other words of the creed of the Shia Imami Ismailis) in respect of "marriages, ablutions and funeral ceremonies". He stated that he saw in print that Khoj'as were Sunis and that a certain person (meaning himself) was "peremptorily inviting them to embrace the Imamujah creed". He prepared the paper in order that (as under the English Government the exercise of all religions is free) the Khojas who believe in Shia Imami Ismaili faith, may now act openly according to the practices of that religion "which their ancestors held secretly" especially as regards the celebration of marriages, funerals, etc. The paper ended thus;

"Now he who may be willing to obey my orders shall

write his name in this book" (the paper was written

at the commencement of a book with blank leaves for

signature) "that I may know him"

The paper received an almost unanimous adhesion except from a small minority in Bombay.

Justice Arnould spoke of the writing:

"It is not, as it has been occasionally but incorrectly termed, a profession of Shia faith. It is a mere declaration or pledge on the part of those Khojas who, in matters of religious opinion, are already Shias or rather Shia Imami Ismailis, that they will from the time of signing it perform their funeral and marriage ceremonies, not according to the Suni form, as it is heretofore done, but according to the Shia form".

This led once more to antagonism. It led to a refusal by the Barbhaie to pay any customary dues. It led further to the filing of a fresh Bill and Information, the object of which was to obtain from the Court an authoritative declaration that the Khojas have been and still are SUNIS.

On 16th August, 1862. the Jamat gathered and gave the Barbhaie an ultimatum that if they, within 21 days, agreed to abide by all the present and future rules of the community and paid all fees and contributions due, then the Jamaat would accept them as brethern - if not, then they would be turned out of caste. At the expiry of 21 days a second meeting was called and by a unanimous vote of all the Khojas assembled in jamatkhana, the relators, plaintiffs and their adherents were outcasted.

In February, 1864, a further step was taken; the official Suni Moola was turned out of the old mosque in the Khoja burial ground and henceforth the service was performed by a Shia Moola according to Shia forms.

Who was Pir Sadardin and what form of Mohamedanism to which he converted the Khojas?

According to the tradition uniformly prevailing among all Khojas except the numerically small proportion who constitute the Plaintiffs, Pir Sadardin came from Khorasan as a Dai (missionary) of one of the ancestors of the Aga Khan (Shah Islam Shah) and converted the Khojas to the Shia Imami Ismaili form of Mohamedanism.

The Plaintiffs maintained that Pir Sadardin was from Mooltan, that he was a Suni and he converted the Khojas to the Suni form of Mohamedanism.

Two witnesses both Syuds were called by the Relators and Plaintiffs, and they deposed that they were lineal descendants of Pir Sadardin and each gave exactly opposite accounts of the religious opinions of that converter of the Khojas. The witnesses both appeared credible; however the testimony of the Syud who deposed that Pir Sadardin was a Shia was consonant with the tradition of the greatly preponderating majority of the Khoja community ealpatidar.com

"But there are 3 considerations which lead me to the conclusion that the truth is with the majority".

CONSIDERATION I

If Pir Sadardin had been a Suni teacher who preached Suni Mohamedanism, he must have stood forth before the Khoja community as the great object of veneration with nothing between himself and the apostle of God. In such a case the homage, devotion and pilgrimage to Kerman would naturally have been paid to the holy tomb of the great founder and saint who had converted the Khojas to Islam. Pir Sadardin lies buried in Ootch in Bhawulpore but no pilgrimages are made to or devotion shown for his tomb. As Arnould says; "Now this in my judgment, is a state of things quite incompatible with the theory that Pir Sadardin, of his own mere motion as an independent founder and originator, had converted the ancestors of the Khojas to the Suni faith of Islam."

EXPLANATION:

The Court felt that if Pir Sadardin was a Suni then how can it be explained that Khojas paid no reverence to the tomb of Pir Sadardin which was in Ootch in Bhawulpore.

CONSIDERATION 2

How can it be explained that the Khojas paid contributions to the Imam and made pilgrimages to the residence of the Imam.

"On the supposition that Pir Sadardin was a Dai or Missionary of the then Imam of the Ismailis, the explanation is clear and simple, but if this be denied, what other explanation is to be given to the facts? Was there a subsequent conversion and a second founder? This is not even pretended, and, if there had been some tradition of it, it would certainly have been preserved, whereas no such tradition exists or is pretended to exist."

EXPLANATION

The Court asked if Pir Sadardin was a Suni and converted the Khojas to Suni Islam how are we to account for the well established fact that the Khojas from the beginning have been bound by ties of close spiritual homage and devotion to the hereditary Imams of the Ismailis.

CONSIDERATION 3

The character of the ancient religious books of the Khojas and especially "DAS AVTAA.R" the chief of them.

The authorship of "Das Avtaar" is attributed to Pir Sadardin. The "Das Avtaar has been from the beginning in the accepted scripture, so to speak, of the Khoja sect". The Das Avtaar, said the Court, was "invariably read over Khojas who are at the point of death".

Evidence was taken which proved incontestably that in all Jamatkhanas (including that of Bombay) the Das Avtaar was read publicly and periodically as a matter of stated religious observance

If Pir Sadardin composed this work or introduced it as a work of principal religious authority, the explanations of its continuous and all but universal use in and by the Khoja community is easy and plain. - On any other supposition it remains unexplainable.

Regarding then Pir Sadardin as the author, compilor or adoptor of the Das Avtaar, what is the inference that arises from the nature of that work as to the nature of his religious opinions.

WHAT IS THE DAS AVTAAR?

It is a treatise in 10 chapters containing the account of 10 avtaars or incarnations, each dealt with in a separate chapter. The first 9 of these chapters treat of the nine incarnations of the Hindu God VISHNU; the 10th chapter treats of the incarnation of the "Most Holy Ali". No Suni could have compiled or adopted such work as this; the idolatry of the first

nine chapters - the semi deification of Ali implied in the 10th chapter, alike make this utterly impossible.

It is precisely such a book as a Dai or Missionary of the Ismailis would compose or adopt if he wished to convert a body of not very learned Hindus to the Imami Ismaili faith.

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"It precisely carries out what were the standing instructions to the Dais of the Ismailis - to procure conversions by assuming as in great part true, the religious standpoint of the intended convertite".

This is exactly what Das Avtaar does. It assumes the nine incarnations of the Vishnuvite system by super-adding the cardinal doctrine of the Ismailis, the incarnation of the "Most Holy Ali". When the Das Avtaar is read in the Jamatkhana the congregation of the people rises and remains standing till it is concluded; making profound reverences whenever the reader pronounces the name of the "Most Holy Ali".

The Court felt that there was no doubt that the preponderating tradition of the Khoja community was substantially correct, that Pir Sadardin was a Dai of the hereditary Imams of the Ismailis and that he converted the Khojas to the Shia Imami Ismaili form of mohamedanism.

QUESTION

If this is so how come Khojas in their funeral and marriages had followed the practices and the rites of SUNI Mohamedans?

The answer is that Khojas had from the beginning had to practice "TAKIAH" concealment of their own views and adoption of the religious ceremonies out of dread of persecution for religious sake. Takiah was unknown to Sunis, they never had occasion resort to concealment. It has been frequently practised by Shias and more so by Ismailis.

The Court then spoke of Suni bigotry in Emperor Akbar's reign in India (A.D. 1546 - A.D. 1605). Though Akbar was a great reformer and highly progressive, the SUNI bigotry was fatal, The Court gave instances of this. "If under such a progressive leader SUNI bigotry was such a danger, what would not have happened to the Khojas if they had not resorted to Suni Kazees for the celebration of their marriage and to the SUNI mosques and Moolas for the performance of their funerals,

Even then (1866) Shia Moolas were not to be found in Bombay. So this was both Takiah and convenience (in this latter case Suni Kazees kept a register of marriages capable of supplying easy and authoritative proof of the fact of marriage).

Argument:

If takiah is accountable for the compliance with Suni practices in times of persecution, why did Khojas continue after the dread of persecution ended?

Justice Arnould attributes this to habit. "The omnipotent power of use and want in the ordinary usage of social life, and who reflect on the long continuance of practices and institutions long after the reason of their first establishment, and all sufficient grounds for their perpetuation have passed away".

The Court then spoke of Hadj, i.e., pilgrimage to Mecca, the Khoja prayers and various customs. Justice Arnould states; "the clear conclusion at which I have arrived upon a full consideration of the evidence before me is this - that the Khojas never were Sunis, but that from the beginning they have been, and (with the exception of the relators and plaintiffs and their followers in Bombay), still are Shias of the Imami Ismaili persuasion

The Court then described what are the Khojas:

"It is a sect of people whose ancestors were Hindu in origin; which was converted to and has throughout abided in the faith of the Shia Imami Ismailis and which has always been and still is bound by ties of spiritual allegiance to the comhereditary Imams of the Ismailis".

Regarding the other prayers asked for in the pleadings Justice Arnould stated:

"In fact there is no ground left upon the evidence on which the relators and Plaintiffs can seek relief from this Court either in its charitable or any other jurisdiction".

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The decree the Court granted was:

"That this suit be dismissed, as against the first defendant, His Highness Aga Khan as against Allarukia Soomal and his co-answering defendants as against Asso Gangjee, with costs as to all the said defendants, to be paid, by the relators and the plaintiffs".

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